

8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 BETSY P. ELGAR,

12 Plaintiff,

13 v.

14 WELLS FARGO,

15 Defendant.

CASE NO. C11-5963RJB

ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS AND
DISMISSING CASE

16 This matter comes before the court on plaintiff's Motion to Proceed *In Forma Pauperis*.
17 Dkt. 1. The court has considered the motion and the remainder of the file herein.

18 On November 21, 2011, plaintiff filed a civil complaint and an application to proceed *in*
19 *forma pauperis* (IFP), that is, without paying the \$350 filing fee for a civil case. Dkt. 1.

20 **Standard for Granting Application for IFP.** The district court may permit indigent
21 litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See*
22 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to
23 proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375
24 U.S. 845 (1963).

1 **Plaintiff's Application to Proceed IFP.** Plaintiff states that she has income from Social
2 Security and properties in the Philippines. Dkt. 1, at 2. Plaintiff has not shown that she is unable
3 to pay the filing fee in this matter.

4 **Review of the Complaint.** The court has carefully reviewed the complaint in this matter.
5 Because plaintiff filed this complaint *pro se*, the court has construed the pleadings liberally and
6 has afforded plaintiff the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police Dep't*,
7 839 F.2d 621, 623 (9th Cir.1988).

8 The complaint is very difficult to decipher. Plaintiff states on one document that "These
9 two never make me feel important." Dkt 1-1, at 4. Plaintiff has attached letters to politicians
10 and bankers, and various other documents that are also difficult to understand.

11 This complaint is frivolous and fails to state a claim.

12 Unless it is absolutely clear that no amendment can cure the defect, a *pro se* litigant is
13 entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal
14 of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995). In this case, as
15 discussed above, any attempt by plaintiff to amend the complaint would be futile.

16 **Decision on Application to Proceed IFP.** Based upon the above analysis of the
17 deficiencies in the complaint, and plaintiff's financial statement, the court should deny plaintiff's
18 application to proceed *in forma pauperis*.

19 **Sua Sponte Dismissal.** A federal court may dismiss *sua sponte* pursuant to Fed.R.Civ.P.
20 12(b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may be
21 granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) ("A trial court may
22 dismiss a claim *sua sponte* under Fed.R.Civ.P. 12(b)(6). Such a dismissal may be made without
23 notice where the claimant cannot possibly win relief."). *See also Mallard v. United States Dist.*
24

1 Court, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal court would have the power to
2 dismiss frivolous complaint *sua sponte*, even in absence of an express statutory provision). A
3 complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.2d
4 1221, 1228 (9th Cir. 1984). This case has no arguable basis in law or fact. The complaint should
5 be dismissed as frivolous and for failure to state a claim.

6 **IFP on Appeal.** In the event that plaintiff appeals this order, and/or appeals dismissal of
7 this case, IFP status should be denied by this court, without prejudice to plaintiff to file with the
8 Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis*.


9 Therefore, it is hereby

10 **ORDERED** that plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 1) is
11 **DENIED**. This case is **DISMISSED WITH PREJUDICE**. In the event that plaintiff appeals
12 this order, IFP status is **DENIED** by this court, without prejudice to plaintiff to file with the
13 Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis*.

14 ...

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
16 to any party appearing *pro se* at said party's last known address.

17 Dated this 23rd day of Nov 2011

18 
19 Robert J. Bryan
20 United States District Judge
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